

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 144 and 2017 Iowa Acts, Senate File 471, section 3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 100, “Vital Records Registries and Reports,” Iowa Administrative Code.

The proposed amendments to Chapter 100 are required in order to implement and enforce the reporting requirements established under Iowa Code sections 144.29A and 146B.2 and 2017 Iowa Acts, Senate File 471, for the reporting of terminations of pregnancy.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 8, 2017. Such written comments should be directed to Melissa Bird, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. Comments may be sent by e-mail to melissa.bird@idph.iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 144 and 2017 Iowa Acts, Senate File 471.

The following amendments are proposed.

ITEM 1. Amend rule 641—100.1(144) as follows:

641—100.1(144) Definitions. For the purpose of this chapter, the definitions in 641—Chapter 95 shall apply. In addition, the following definitions shall apply solely to this chapter:

“Abortion” means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus.

“Adult,” when used in reference to the mutual consent voluntary adoption registry, means an individual who has reached the age of 18 years at the time application is made.

“Aggregate form” means a compilation of the information received by the department on the Statistical Report of Termination of Pregnancy form for each item listed, with the exception of the report tracking number, the health care provider code, and any set of data for which the number is so small that the confidentiality of any person to whom the information relates may be compromised.

“Attempt to perform an abortion” means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performing of an abortion.

“Child,” when used in reference to the declaration of paternity registry, means a person under 18 years of age for whom paternity has not been established.

“Court” means the juvenile court when used in reference to the declaration of paternity registry.

“Father” means the male, biological parent of a child when used in reference to the declaration of paternity registry.

“Fertilization” means the fusion of a human spermatozoon with a human ovum.

“Health care provider” means an individual licensed under Iowa Code chapter 148, 148C, 148D, or 152, or any individual who provides medical services under the authorization of the licensee.

“Inducing a termination of pregnancy” means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

“Inducing a termination of pregnancy” includes abortion.

“Major bodily function” includes but is not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

“Medical emergency” means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

“Medical facility” means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical center, or other institution or location where medical care is provided to any person.

“Perform,” “performed,” or “performing,” relative to an abortion, means the use of any means, including medical or surgical, to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

“Physician” means a person licensed under Iowa Code chapter 148.

“Postfertilization age” means the age of the unborn child as calculated from fertilization.

“Probable postfertilization age” means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is to be performed.

“Reasonable medical judgment” means a medical judgment made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

“Registrant,” when used in reference to the declaration of paternity registry, means a person who has registered and claims to be the father of a child.

“Registry” means the declaration of paternity registry or the mutual consent voluntary adoption registry.

“Sibling” means one of two or more persons who are born of the same parents or, sometimes, who have at least one parent in common. “Sibling” also means brother or sister when used in reference to the mutual consent voluntary adoption registry.

“Spontaneous termination of pregnancy” means the occurrence of an unintended termination of pregnancy at any time during the period from conception to 20 weeks gestation and which is not a spontaneous termination of pregnancy at any time during the period from 20 weeks or greater which is reported to the department as a fetal death under Iowa Code chapter 144.

“Unborn child” means an individual organism of the species *Homo sapiens* from fertilization until live birth.

ITEM 2. Amend rule 641—100.5(144) as follows:

641—100.5(144) Statistical report of termination of pregnancy report. A health care provider who initially identifies and diagnoses a spontaneous termination of pregnancy or who induces a termination of pregnancy shall file with the department a Statistical Report of Termination of Pregnancy form for each termination.

100.5(1) The health care provider shall make a good-faith effort to obtain all of the following information that is available with respect to each termination:

- a. The confidential health care provider code as assigned by the department.
- b. The report tracking number.
- c. The maternal health services region of the Iowa department of public health, as designated as of July 1, 1997, in which the patient resides. If the patient resides in another state, the residence shall be reported as “nonresident.”
- d. The race of the patient.
- e. The age of the patient.
- f. The marital status of the patient.
- g. The educational level of the patient.

h. The number of previous pregnancies, live births, and spontaneous or induced terminations of pregnancies.

i. The month and year in which the termination occurred.

j. The number of weeks since the patient's last menstrual period and a clinical estimate of gestation.

k. Whether the termination was spontaneous or induced.

l. The method used for an induced termination, including whether mifepristone was used.

100.5(2) In addition, a physician who performs or attempts to perform an abortion shall report to the department all of the following:

a. If a determination of probable postfertilization age of the unborn child was made, the probable postfertilization age determined and the method and basis of the determination.

b. If a determination of probable postfertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed.

c. If the probable postfertilization age of the unborn child was determined to be 20 or more weeks:

(1) The basis of the determination of a medical emergency, or

(2) The basis of the determination that the abortion was necessary to preserve the life of an unborn child.

d. The method used for the abortion and:

(1) In the case of an abortion performed when the probable postfertilization age was determined to be 20 or more weeks, whether the method of abortion used was one that, in the physician's reasonable medical judgment, provided the best opportunity for an unborn child to survive, or

(2) If such a method was not used, the basis of the determination that termination of the human pregnancy in that manner would pose a greater risk than would any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function.

100.5(2) 100.5(3) The health care provider who identifies a spontaneous termination or performs an induced termination shall prepare the report on the standard form and forward to the state registrar on or before the tenth day of each calendar month all records for the preceding month. Reports may be sent by certified mail to the state registrar. Termination reports shall be submitted within 30 days of the date of the occurrence.

100.5(3) 100.5(4) The department shall provide the forms, or the provider may use the master copy of the form provided by the department to make copies for reporting.

100.5(4) 100.5(5) The information shall be collected, reproduced, released, and disclosed in a manner which ensures the anonymity of:

a. The patient who experiences a termination of pregnancy;

b. The health care provider who identifies and diagnoses or induces a termination of pregnancy;
and

c. The hospital, clinic, or health facility in which a termination of pregnancy is identified and diagnosed or induced.

100.5(5) 100.5(6) The department may share information with federal public health officials for the purpose of securing federal funding or conducting public health research. However, in sharing the information, the department shall not relinquish control of the information, and any agreement entered into by the department with federal public health officials to share information shall prohibit the use, reproduction, release, or disclosure of the information by federal public health officials in a manner which violates Iowa Code section 144.29A.

100.5(6) 100.5(7) The By June 30, annually, the department shall annually publish a demographic summary of the information obtained statistics for the previous calendar year, compiled from the reports for that year, except that the department shall not reproduce, release, or disclose any information obtained which reveals the identity of any patient, health care provider, hospital, clinic, or other health facility, and shall ensure anonymity in the following ways:

a. The department may use information concerning the report tracking number or concerning the identity of a reporting health care provider, hospital, clinic, or other health facility only for the purpose

of information collection. The department shall not reproduce, release, or disclose this information for any purpose other than for use in annually publishing the demographic summary.

b. The department shall enter information from any report of termination submitted within 30 days of receipt of the statistical report of termination of pregnancy and, following entry of the information, shall immediately destroy the report by shredding it. However, entry of the information from a report shall not include any health care provider, hospital, clinic, or other health facility identification information including, but not limited to, the confidential health care provider code, as assigned by the department.

c. To protect confidentiality, the department shall limit release of information in an aggregate form which prevents identification of any individual patient, health care provider, hospital, clinic, or other health facility.

d. The department shall establish and use a methodology to provide a statistically verifiable basis for any determination of the aggregate level at which information may be released so that the confidentiality of any person is not comprised. The methodology shall consider both the counts of the events for each item of information and the population that could be represented.

~~100.5(7)~~ 100.5(8) Reports, information, and records submitted and maintained are strictly confidential and shall not be released or made public upon subpoena, search warrant, discovery proceedings, or by any other means.

~~100.5(8)~~ 100.5(9) The department shall assign a code to any health care provider who may be required to report a termination. An application procedure shall not be required for assignment of a code to a health care provider.

~~100.5(9)~~ 100.5(10) A health care provider shall assign a report tracking number which enables the health care provider to access the patient's medical information without identifying the patient. The report tracking number shall be maintained by the provider for a period of six months after the end of the calendar year.

~~100.5(10)~~ 100.5(11) ~~To ensure proper performance of the reporting requirements, it is preferred that a health care provider who practices within a hospital, clinic, or other health facility authorize one staff person to fulfill the reporting requirements. For reporting of spontaneous terminations of pregnancy, a health care provider who practices within a hospital, clinic, or other health facility may file the required reporting forms with the department or may authorize one staff person to fulfill the reporting requirements. For reporting of induced terminations of pregnancy, the physician performing the termination shall file the required reporting forms with the department.~~

100.5(12) Reporting penalties.

a. A physician who fails to submit a report in accordance with 2017 Iowa Acts, Senate File 471, section 3(3), and these rules by the end of 30 days following the due date shall be subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period the report is overdue. The fee shall be collected by the department.

b. A physician required to report in accordance with 2017 Iowa Acts, Senate File 471, section 3(3), who has not submitted a report or who has submitted only an incomplete report more than one year following the due date may, in an action brought by the board of medicine in the manner in which actions are brought to enforce Iowa Code chapter 148, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court.

c. A physician who intentionally or recklessly falsifies a report required under 2017 Iowa Acts, Senate File 471, section 3, is subject to a civil penalty of \$100. The civil penalty shall be collected by the department pursuant to Iowa Code chapter 17A and 641—Chapter 173.

~~100.5(11)~~ 100.5(13) Any person who knowingly violates a provision of these rules is guilty of a serious misdemeanor pursuant to Iowa Code section 144.52.

ITEM 3. Amend **641—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 144.29A, 144.52 and 252A.3A and 2017 Iowa Acts, Senate File 471, section 3.